

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 5709, 5710, 5711 AND 5712 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DY.COLLECTOR

Versus

KALYAN DUNGARBHAI

Appearance:

Mr Samir J Dave, AGP for Petitioners
Mr K L Dave for respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 10/08/2000

ORAL (COMMON) JUDGMENT (per DP Buch, J.)

The Reference Court has decided a group of 40 matters by common judgment and order dated 20.3.1999. However, during the course of hearing and arguments, it was noticed that only four out of the aforesaid 40 matters are ex-facie time-barred and, therefore, they have been separated and are being disposed of by this separate common judgment. Rest of the matters are being dealt with separately by separate judgment and order. This was done at the request and consent of the learned Advocates for the parties.

2. These four matters involved LAR case No.11/88 to 14/88 arising out LAQ No.30/82 of village Fatsar, Una Taluka, Junagadh District. The lands of the respondents abovenamed were acquired by the Land Acquisition Officer for Machhundri Irrigation Scheme by issuing notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'). Thereafter the Land Acquisition Officer passed award on 24.3.1986. Notices were issued to and served upon the respondents under section 12(2) of the Act. The respondents were not satisfied by the amount of compensation awarded by the Land Acquisition Officer and, therefore, they preferred applications before the Collector for reference under section 18 of the Act on 1.8.1986. The Collector referred the matter to the District Court which were registered as LAR Cases No.11/88 to 14/88. The reference court issued notices to the appellants and after hearing the evidence and arguments, the reference court came to the conclusion that the compensation awarded by the Land Acquisition Officer was on lower side and, therefore, the amount of compensation was enhanced by the reference court by fixing the price of the lands under acquisition in accordance with the order in the aforesaid judgment.

3. In the aforesaid matter, the present appellants had taken up the contention that reference applications filed under section 18 of the Act by the respondents before the Collector were time-barred and, therefore, the Collector should not have referred the matter to the District Court and the District Court as reference court, should not have entertained the said references of the respondents and, therefore, the applications be dismissed with costs. The reference court considered the said aspects of the case and found that the references were within limitation. The appellants have preferred these four appeals against the said judgments and awards of the reference court. The appellants have contended that the amount of compensation fixed by the reference court was excessive and they have also contended that the present respondents have not filed reference application before

the Collector within six weeks from the date of receipt of notice under section 12(2) of the Act and therefore, according to the case of the respondents, the applications for reference were time barred and therefore, the reference court had no jurisdiction to entertain the references. It has also been contended by the appellants that the applications for reference under section 18 have also not been made within six months from the date of knowledge of the award and, therefore, also the references were time-barred. Since the issue of limitation has been strongly contested on behalf of the respondent and on behalf of the appellant in these four matters, learned AGP, Mr Samir Dave and learned Advocate Mr K L Dave for the respondents have requested the Court to restrict our decision only on the issue of limitation. Therefore, they have also addressed us only on the point of limitation and they did not address on the merit of the case. We have, therefore, heard the arguments advanced by M/s. Dave and Dave on the issue of limitation.

4. On appreciation of the said arguments and evidence on record, we are convinced that the applications for references were not made by the present respondents in the aforesaid four matters within limitation and, therefore, the reference court had no jurisdiction to entertain the said references and, therefore, the appeals should be allowed and the applications for reference should be dismissed. For the aforesaid purpose, we would not go into details on the aspect of the quantum of amount of compensation and restrict our discussion and decision only on the issue of limitation as has been submitted by M/s.Dave and Dave, learned Advocates for the respective parties.

5. Before going to the issue of limitation, we may make it clear that M/s. Dave and Dave, Advocates have taken us through the Records and Proceedings of the Reference court. They have referred the relevant documents from the records. On the strength of the documents and evidence on record, we are required to consider the issue of limitation.

6. So far as the applications for reference are concerned, it is very clear that the present respondents have stated in the applications that they have not received notice under section 12(2) of the Act. This observation relates to all the four matters in this appeal.

6.1. Exh.5 is the first document which refers to the

date of service of notice under section 12(2) of the Act. There it has been clearly said in para 5 that the award was declared on 21.3.1986 and notice under section 12(2) has been served on 15.4.1986 and the applications for reference have been received on 1.8.1986 and, therefore, these applications are time-barred and hence they deserve to be dismissed. This document was not challenged or disputed before us. Even M/s. Dave & Dave, while arguing the matter on limitation have very clearly referred to this document Exh.5 and have relied upon the same. Therefore, this document makes it clear that the notice under section 12(2) of the Act has been served and it has been served on the respondents on 15.4.1986. So far as the date of presentation of the applications for reference under section 18 before the Collector is concerned, it is an admitted position that these applications have been submitted to the Collector on 1.8.1986. Exh. 1 is the application in each of the four cases and all of them bear the said date i.e. 01.8.1986. Therefore, undisputedly the applications for reference have been submitted by the respondents abovenamed before the Collector on 1.8.1986. Even M/s. Dave & Dave, have not disputed this factual aspect. It is, therefore, clear that the notices were served on the respondents on 15.4.1986 and the applications for reference have been submitted to the Collector on 1.8.1986.

7. Perusal of Exh.7 also shows that the notices have been served under section 12(2) of the Act upon the respondents on 15.4.1986. This document was also referred to and relied upon by M/s.Dave & Dave, during the course of their arguments. There is no dispute that the issue of limitation was contested in para 3 of the written statement and there was also an issue before the reference court about limitation. Therefore, the parties were aware of the issue of limitation. Even during the course of their arguments, M/s.Dave & Dave, have accepted that the notices have been served upon the respondents on 15.4.1986 and the reference applications have been submitted on 1.8.1986. In the aforesaid facts and circumstances of the case, it is apparently clear that the application for reference have not been submitted, within a span of six weeks from the date of service of notice under section 12(2) of the Act. Section 12(2) of the Act is reproduced as under:

"12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

The aforesaid provision makes it clear that the Land Acquisition Officer is only required to send notice under section 12(2) of the Act. It does not say that the copy of the award should be attached with the said notices. Section 18 of the Act is also relevant for the purpose of deciding the question of limitation. Section 18 of the Act reads as under:

"18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested,

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made;

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

The aforesaid provision makes it clear that if the owners of the property are not satisfied with the award of the Land Acquisition Officer, then they must file application for reference under section 18 within six weeks from the date of service of notice under section 12(2) of the Act. It is apparent from the aforesaid records that the applications for reference under section 18 of the Act have not been filed within six weeks from the date of service and, therefore, the applications were time-barred on the face of it. It is well settled that the Collector has no authority, power or jurisdiction to condone the delay under section 5 of the Limitation Act. Moreover, it is nobody's case that the Collector has condoned the delay. Simply because the applications for reference

have been forwarded by the Collector of the Court, it cannot be said that the Collector had condoned the delay. Therefore, on the one hand, the Collector had no power or jurisdiction to condone the delay. On the other hand, it is nobody's case that the Collector had condoned the delay. So far as the court is concerned, even the reference court is not carrying any authority or power or jurisdiction to condone the delay. Therefore, the delay if once caused cannot be condoned either by the Collector or by the reference court. Even the reference court has not condoned the delay. Therefore it is apparently clear that the applications for reference filed by the respondents under section 18 of the Act are time barred as they have been filed beyond the period of six weeks from the date of receipt of notice under section 12(2) of the Act. It is very clear that when the notices under section 12(2) were served on 15.4.1986, the period of six weeks expired on 27.5.1986 and, therefore, the respondents were required to file applications under section 18 of the Act before the Collector on or before 27.5.1986. However, admittedly, they have preferred applications for reference on 01.8.1986. Therefore, they were late by not less than two months in filing applications for reference under Section 18 of the Act.

8. It would be very clear that the respondents in other matters have preferred applications before the Collector on 14.5.1986. They were also served with notices under section 12(2) on 15.4.1986. All the respondents in this group were served with notices under section 12(2) on 15.4.1986. Out of them these four respondents filed applications before the Collector on 1.8.1986 whereas the remaining respondents have filed such applications before the Collector on 14.5.1986. If those respondents could prefer applications on 14.5.1986, then these four respondents could equally do the same and file applications under section 18 of the Act on or before 27.5.1986. They have not done so and hence the applications for reference were ultimately time barred. It would be worthwhile to consider the document at Exh.53. This document clearly establishes that the notices under section 12(2) were served upon the present respondents on 15.4.1986.

9. Looking to the evidence on record, M/s.Dave & Dave agreed that the applications submitted by the present respondents before the Collector for making reference to the Court under section 18 of the Act were clearly time-barred so far these four appeals are concerned. There is a decision in the case of O.S.D., LAQ v. Shah Manilal Chandulal, reported in 1996 (2) GLR

626 which clearly says that the Collector is not a Court and, therefore, he cannot condone delay under section 5 of the Limitation Act. Even the High Court cannot exercise powers under Section 5 of the Limitation Act. Therefore, the Court could not entertain invalid references. In view of the aforesaid decision also, the reference court has clearly erred in holding that the references were within limitation and he had jurisdiction to entertain the same.

10. In the aforesaid view of the matter, all these appeals are allowed. The impugned judgments and awards of the reference court in all the four LAR cases are set aside. The applications of the respondents for reference under section 18 of the Act before the Collector as well as before the Supreme Court are ordered to be dismissed. In other words, all the LAR cases are ordered to be dismissed. In case any additional amount has been paid to the respondents, they shall return the said amount to the appellants and the appellants will be at liberty to recover the same from the respondents. Considering the facts and circumstances of the case, there shall be no order as to costs in all the appeals. The parties shall bear their own costs in this court as well as in the reference court. Decree shall be drawn accordingly.

[M H Kadri, J.]

msp [D P Buch, J.]